

Driving Under the Influence

Getting any kind of ticket is frustrating, but getting arrested and charged with driving under the influence of alcohol or drugs is one of the most serious offenses, short of being charged with vehicular homicide. Each year, nearly 1.5 million Americans are charged with driving while intoxicated. This is just the tip of the iceberg. Some experts estimate that at any given moment, one in 50 drivers on the road is legally intoxicated. In one recent year, more than 25,000 Americans died and more than one million were injured in accidents involving drunk drivers.

What is a DUI or DWI?

Each state establishes its own laws regarding certain criminal offenses, including driving under the influence (DUI) or driving while intoxicated (DWI). Generally, a DUI or DWI is committed when a person operates a motor vehicle while under the influence of alcohol. For simplification, this HelpSheet will refer to both offenses as DUIs.

In some states, a blood-alcohol content of .10 percent is the threshold for finding a driver legally intoxicated. Statistics show that drivers who reach or exceed the .10 percent threshold are at least six times more likely than sober drivers to be involved in an automobile accident. As a result, many states have lowered the threshold to .08 percent or less. Some even have passed zero-tolerance laws that do not limit the amount of alcohol one can have in one's bloodstream; any measurable amount would be sufficient for the police to charge the driver with DUI. Congress has proposed legislation that would withhold federal highway funds from states that fail to impose the lower limit.

For most drivers, it doesn't take a great deal of alcohol to exceed legal blood-alcohol levels. For a person who weighs 180 pounds, three or more drinks of liquor in a one-hour period can cause a blood-alcohol concentration in excess of .10 percent. While some people believe that drinking beer or wine poses less danger of intoxication, the amount of alcohol in a 12-ounce bottle of beer or a six-ounce glass of wine is equal to that in 1 1/2 ounces of hard liquor.

If you drink on an empty stomach, you will reach a higher blood-alcohol level faster. Even though some drinkers develop a tolerance to alcohol, blood-alcohol level is a simple equation factoring the amount of alcohol consumed, the time it took to consume it and how much you weigh.

Police Stops

The police stop drivers for several reasons, such as speeding, driving too slow, swerving, failing to use headlights or going through stop signs or red lights. Under most circumstances, an officer must have a reasonable suspicion or probable cause that you have violated the law to stop you.

If you are stopped by an officer, remember that you are not required to answer potentially incriminating questions. If the officer suspects you have been drinking alcohol or are under the influence of other drugs while driving, he or she may ask you to take a sobriety test and/or chemical test.

Because of the danger presented by drunk drivers, many states have set up roadblock programs that allow police officers to briefly stop drivers to determine if they are driving while intoxicated. If a police officer suspects that a driver stopped at one of these sobriety checkpoints is driving under the influence of alcohol, the driver may be required to submit to a roadside sobriety test and to provide a breath or blood sample to measure blood-alcohol concentration.

Although the United States Supreme Court has ruled that such roadblocks do not violate a driver's federal constitutional rights, state courts have arrived at varying conclusions when they have been challenged for violating rights granted under state constitutions. Some state courts have held that sobriety checkpoints do violate a driver's right not to be subjected to unreasonable searches and seizures, while others have taken the opposite view.

Sobriety and Chemical Tests

The police use sobriety tests to determine whether an individual is intoxicated and whether there are sufficient grounds for a DUI arrest. Field sobriety tests involve a test of physical coordination, such as walking a straight line, standing on one foot or reciting the alphabet. In most states, you are not legally required to take a field sobriety test.

Officers typically will request that the individual suspected of being intoxicated take chemical tests, such as breath, blood or urine tests. If you refuse to take a chemical test, you could face some serious consequences. In most states, under a legal doctrine known as *implied consent*, the law considers you to have agreed to submit to chemical blood-alcohol testing when you obtained your driver's license. Your refusal to take a chemical test may constitute a separate offense that could result in the suspension of your driver's license by your state's department of motor vehicles (DMV), even if you are not found guilty of driving under the influence.

In some states, the DMV may suspend your license automatically within a specific period of time from the date of your DUI citation unless you request a hearing. Usually, you must request the hearing within a relatively short deadline, such as seven to 10 days. Contact your state's DMV or a local attorney for more information.

In most states, you do not have a right to consult with an attorney before taking chemical tests. In some states, a high reading on a blood-alcohol test indicates a presumption of guilt that will be difficult to overcome in court.

Penalties for Drunk Driving

A DUI can be classified as a misdemeanor or a felony, depending on the severity of the offense and specific state laws. Usually, if the offense involves death or personal injury, it will be considered a felony. If someone died in an accident in which someone was driving under the influence, the intoxicated driver could be charged with manslaughter or second-degree murder. As the laws vary from state to state, it is very important to research your specific state laws and consult with a local criminal law attorney for more specific information.

Penalties for driving while intoxicated are becoming increasingly severe. In some states, a first offender found guilty of driving under the influence of alcohol can be sentenced to as much as 90 days in the county jail, fined up to \$500 and have his or her driver's license suspended for up to two years. A second offense can lead to a year in jail and a fine of \$1,000. Third and subsequent offenses can bring as much as a five-year prison term. Offenders can also be required to enter alcohol-treatment programs or to perform community service.

In some states, courts can require drivers to install interlock devices on their vehicles. These devices require the driver to blow into a tube that measures alcohol concentration of the driver's breath. If the device detects alcohol, the vehicle won't start. Some states even have considered requiring repeat offenders to use a license plate that prominently labels them as convicted drunk drivers.

If You are Charged with Driving While Intoxicated

If you are charged with DUI, various facts or events may help you defend your case, depending on your particular situation. Some of these are listed below:

- You were not actually driving.
- The officer did not have probable cause to stop, detain and arrest you.
- The officer did not advise you or gave you incorrect information on the consequences of refusing to take a chemical test. This could affect the court admissibility of the chemical-test results, as well as the license suspension imposed by the DMV.
- The officer did not give you Miranda warnings (i.e., that you have the right to remain silent, that anything you say may be used against you in court and that you have the right to an attorney) after your arrest. In this case, incriminating statements you made in response to police questioning during custody may not be admissible in court.
- You can contest the officer's observations and opinions as to your intoxication.
- You can contest the accuracy of your chemical test and the qualifications of the person administering the test.

If you are ever charged with driving under the influence of alcohol or driving while intoxicated, it is important that you get help from an attorney as soon as possible. You can obtain the name of an attorney experienced in this area of the law from your state bar association's referral service.

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